In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 229

VANCE A. DOBBINS, JR. and JERRY CALVIN SMITH,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Middle District of Florida, petitioners were convicted of willful receipt and concealment of a rare coin collection, of a value in excess of $5,000, which was moving in interstate commerce and which they knew to be stolen, in violation of 18 U.S.C. 2315. Petitioner Dobbins was sentenced to five years' imprisonment; petitioner Smith received a three-year

prison term. The court of appeals affirmed *per curiam* (Pet. App. 9-10).

In summary, the government's evidence showed that in late December 1966, the home of Dr. E. R. Anderson of Chattanooga, Tennessee, was burglarized and his coin collection was stolen (Tr. 80-81, 133-134, 143).[1] The total value of the stolen coins was estimated by Dr. Anderson to be about $225,000, including 189 rolls of pennies having a value of over $40,000 (G. ex 1; Tr. 113, 119). Shortly thereafter, in early January 1967, petitioners met with Bernhard Gould, a coin dealer in Sarasota, Florida, in an effort to sell the coin collection (Tr. 220-224). Certain of the rolls of pennies which petitioners showed Gould bore the identification markings that Dr. Anderson had put on his collection (Tr. 229, 234-236). Petitioner Dobbins told Mr. Gould that they would take $40,000 for the entire lot (Tr. 243). No sale was made (Tr. 248).

Also in early January 1967, petitioner Dobbins spoke to a Rossville, Georgia, retail jeweler, Edward Brody, concerning the disposal of a coin collection (Tr. 317-320). Dobbins told the jeweler that the coins had been left in Florida because the "F.B.I. were right behind them" (Tr. 340-341). Later that month, Brody obtained a buyer for the coins (Tr. 343) and, on January 26, 1967, petitioner Dobbins and a companion brought the coins to his store (Tr. 344). Either petitioner Dobbins or his companion told Brody that the coins came from Anderson's home

[1] "Tr." designates the trial transcript on file with the Clerk.

(Tr. 348-349). Dobbins said they would take $25,000 for the coins (Tr. 352-354). Before the sale could be consummated, the F.B.I. arrested Brody and seized a substantial portion of the coins (Tr. 355-359).

1. Petitioners' principal contention is that the trial judge deprived them of a fair trial by virtue of his "constant injection" into the trial, his "castigation" of counsel and witnesses and his "repeated caustic comments reflecting on the need for haste toward a conclusion" (Pet. 3-4, 5-6). Petitioners further contend that the court's alleged interference in this regard cannot be demonstrated by "[i]solated examples," but only by a "close scrutiny" of the entire transcript (Pet. 3). The court of appeals found that the "trial court did not abuse its discretion to direct the trial in an orderly manner." (Pet. App. 10). Examination of the transcript (on file with the Clerk of this Court) supports that conclusion. The trial judge conducted the proceedings fairly and participated only to the extent of seeking to have all relevant evidence put before the jury. Defense counsel at trial raised no objection to the comments or conduct of the trial judge.

2. Petitioners were properly charged and convicted under 18 U.S.C. 2315. The elements of the offense are the theft of property of a prescribed value, its movement in interstate commerce and the receipt of the property while it is part of interstate commerce knowing that it has been stolen. *Corey* v. *United States*, 305 F. 2d 232, 235-236 (C.A. 9), certiorari denied, 371 U.S. 956. Here the evidence established

the interstate shipment from Chattanooga, Tennessee, to Sarasota, Florida, petitioners' awareness of the theft and their concealment of the coins while they remained part of interstate commerce. That petitioners might also have been convicted of the transportation of the stolen coins in interstate commerce, in violation of 18 U.S.C. 2314, had they been indicted under that section, does not preclude their conviction under Section 2315. See *United States* v. *Pearce*, 275 F. 2d 318, 325 (C.A. 7).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

WILL WILSON,
Assistant Attorney General.

BEATRICE ROSENBERG,
JEROME M. FEIT,
Attorneys.

AUGUST 1969.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1969 358954 75